Supreme Court, U.S.
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No. ——

In the Supreme Court of the United States

LPP MORTGAGE, LTD.,

Petitioner,

v.

STUART C. BRINLEY;
FREDERICK L. RADCLIFFE, JR.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

In each of these consolidated appeals, Petitioner holds a judgment lien on real estate owned by the Respondent, a Chapter 7 bankruptcy debtor. In each case, debtor filed a motion in the bankruptcy court to avoid Petitioner's judgment lien. Construing 11 U.S.C. Section 522(f), the Sixth Circuit Court of Appeals concluded that Petitioner's liens partially impaired the Debtors' $6,000 exemptions in the real estate, and that Petitioner's judgment liens could be partially avoided, allowing junior liens potentially to advance into Petitioner's secured position on the real estate.

The questions presented for review are as follows:

1. Whether the Sixth Circuit erred in its interpretation and application of 11 U.S.C. Section 522(f);

2. Whether the Sixth Circuit's interpretation of 11 U.S.C. Section 522(f) reaches an absurd result;

3. Whether the Sixth Circuit's interpretation of 11 U.S.C. Section 522(f) conflicts with the rulings of this Court; and

4. Whether the Sixth Circuit's application of 11 U.S.C. Section 522(f) partially avoiding Petitioner's judgment lien violated the Fifth Amendment of the U.S. Constitution.

LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

In each of these consolidated petitions, LPP Mortgage, Ltd. (hereafter "LPP") is the petitioner.

In Sixth Circuit case numbers 03-5607 and 03-5653, Stuart C. Brinley (hereinafter "Brinley") is the respondent and only other party. The latter case number represents the number of Brinley's cross-appeal.

In Sixth Circuit case number 03-5606, Frederick C. Radcliffe, Jr. (hereinafter "Radcliffe") is the respondent and only other party.

There are no corporate parties.

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE

The Western District of Kentucky bankruptcy court opinions in *Brinley* and *Radcliffe* are both dated May 24, 2002. The *Brinley* opinion is reported at 278 B.R. 130 and 48 Collier Bankr. Cases 2d 186. App. 31a-37a. The *Radcliffe* opinion is reported at 278 B.R. 426 and 28 Collier Bankr. Cases 2d 241. App. 38a-44a.

The Western District of Kentucky opinions in *Brinley* and *Radcliffe* are dated March 31, 2003, and are both unreported. The citation for the *Brinley* opinion is No. 302 CV 378-S, 2003 WL 1825521 (W.D. Ky. Mar. 31, 2003), and the citation in *Radcliffe* is No. 302 CV 376-S, 2003 WL 1825451 (W.D. Ky. Mar. 31, 2003). App. 20a-30a.

The Sixth Circuit opinion in *Brinley* is dated March 22, 2005, and is published at 403 F.3d 415, Bankr. L. Rep. 80, 356, and 2005 Fed. App. 0141P. App. 1a-15a. The Sixth Circuit opinion in *Radcliffe* is dated March 30, 2005, and is not reported. The citation for the Sixth Circuit opinion in *Radcliffe* is No. 03-5606, 2005 WL 712746 (6th Cir. Mar. 30, 2005). App. 16a-19a.

STATEMENT OF JURISDICTION

The Sixth Circuit Court of Appeals entered judgment in *Brinley* on March 22, 2005, and in *Radcliffe* on March 30, 2005. This Court has jurisdiction to hear these cases pursuant to 28 U.S.C. Section 1254(1) and pursuant to Sup. Ct. R. 13.1.

Notification to the Solicitor General of the United States has been made to Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington DC 20530-0001 for the United States Trustee.

STATUTES INVOLVED IN THE CASE

This case involves an interpretation of Section 522(f) of the Bankruptcy Code (11 U.S.C. Section 522(f)), which states, in pertinent part, as follows:

> (f)(1) Notwithstanding any waiver of exemptions ..., the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is ---
>
> (A) a judicial lien, ...
>
> (2) (A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of –
> (i) the lien;
> (ii) all other liens on the property; and
> (iii) the amount of the exemption that the debtor could claim if there were no liens on the property;
> exceeds the value that the debtor's interest in the property would have in the absence of any liens.

11 U.S.C. Section 522(f).

The case also involves an interpretation of the Fifth Amendment of the United States Constitution, which states in pertinent part as follows: "nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V.

STATEMENT OF THE CASE

Brinley and Radcliffe filed separate Chapter 7 bankruptcy petitions on February 15, 2001, in the United States Bankruptcy Court for the Western District of Kentucky. The basis for the jurisdiction of the bankruptcy court is set forth in 28 U.S.C. Sections 157(a) and (b) and 1334(a) and (b), which confer upon the district and bankruptcy courts jurisdiction to hear cases under and related to Title 11 of the United States Code, the Bankruptcy Code. LPP holds a judgment lien on two properties, one owned by Brinley in a tenancy by the entirety and one owned by Radcliffe, related to the same underlying debt.

On April 9, 2001, Brinley and Radcliffe each filed a Motion to Avoid the Judgment Lien of PNC Bank, Kentucky, Inc., pursuant to Section 522(f) of the Bankruptcy Code. LPP is the successor by assignment of the judgment liens. LPP filed timely objections to the debtors' motions.

The parties stipulated to the facts of the respective cases while the motions to avoid lien were pending in the bankruptcy court. *See*, App. 45a-51a. The material facts in the two cases are essentially identical. In both cases, there is an undisputed first mortgage on the property. Following the first mortgage in priority is LPP's judgment lien. Junior to LPP's judgment lien, there is a consensual mortgage on Brinley's property and a state tax lien on Radcliffe's. In each of the cases, LPP's lien attaches in part to non-exempt equity.